

BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes

March 17, 2005

A meeting of the Board of Environmental Protection was held on Thursday, March 17, 2005, at the Holiday Inn / Ground Round in Augusta, Maine. Virginia Plummer, Acting Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Nancy Anderson, Donald Guimond, Irving Faunce, Ernest Hilton, Virginia Plummer, Jean T. Wilkinson and Nancy Ziegler

Absent: Matt Scott and Richard Wardwell

<u>Staff:</u>	Bureau of Air Quality	Andrea Lani
	Bureau of Air Quality	Jeffrey Crawford
	Bureau of Air Quality	David Wright
	Office of the Commissioner	Ginger Jordan-Hillier
	Bureau of Land and Water Quality	Valerie Whittier
	Bureau of Land and Water Quality	Mike Mullen

Others: David P. Littell, Deputy Commissioner
Mary Sauer, Assistant Attorney General
Cynthia Bertocci, Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 11:30 a.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Deputy Commissioner David Littell reported the following:

BEP Jurisdiction: The Department has received four requests for BEP Jurisdiction: 1) application by Messalonskee Stream Hydro to repair the Union Gas Dam on Messalonskee Stream; 2) Poland Spring, application to increase groundwater withdrawal in Hollis; 3) Blueberry Ridge Mobile Village in Wells for an application for an after the fact permit, and 4) Georgia Pacific, application for beneficial use permit to incinerate wood and C&D waste. The Commissioner has responded to the request associated with the Georgia Pacific application and will hold a public hearing. This proceeding will be presided over by Jim Dusch from the Commissioner's Office.

Question: Board member Virginia Plummer asked about the type of hearing the Department will hold on the Georgia Pacific application.

The Department will conduct a full adjudicatory hearing to include pre-filed written testimony and cross examination of witnesses.

Question: Board member Ernest Hilton asked about the issue associated with the construction and demolition material.

The citizen group that was opposed to the West Old Town Landfill application is concerned about the source and content of the construction and demolition debris and its appropriateness for incineration.

Legislation: Zero Emission Vehicle (ZEV) Program: The Department has concluded its discussions with the auto manufacturers, environmental groups and dealers. The recommendations are reasonable and include "ramp-up" credits similar to programs in Connecticut and Rhode Island, however the Department anticipates there may be opposition. Draft amended language associated with the ZEV resolution is available for Board member review.

LD1149: The Resolve regarding Board responsibilities and workload has been set for a public hearing on March 31, 2005 at 1:00 pm.

Wyman Blueberry Growers: The press recently reported on a pending law suit in federal court under the Clean Water Act by three environmental groups challenging the aerial application of pesticides by Jasper Wyman and Sons. Studies indicate that pesticides detected in surface waters are believed to be attributed to the aerial application of pesticides. A Federal ruling could result in the Department developing MPDES permit standards like those developed for the Aquaculture industry. It is the Department's view that it will follow EPA's lead which currently states that if pesticides are being applied in compliance with Toxics Substance Control Act (TSCA), the Department has no jurisdiction over the application. If EPA changes its view, the Department will likewise re-assess how it approaches this issue.

EPA Rules: EPA has promulgated two new rules: 1) *Clean Air Interstate Rule* which regulates emissions of NOx and SO2 by electrical generation units. Maine and other northeast states do not believe the standards are strict enough to allow attainment with ozone requirements. 2) *Mercury Rule* – Maine has asked the Office of Attorney General to review this rule and to consider filing a law suit on the basis that the mercury rule does not comply with requirements of the Clean Air Act for mercury pollution levels.

Budget: The Appropriations Committee has reviewed but not yet accepted the Department's budget reduction proposals. Anticipated cuts in federal funding related to the Performance Partnership Grant may result in the elimination of 6 positions next year. Most at risk are the water programs.

B. CHAIRMAN'S COMMENTS: Acting Chair Plummer indicated that Board members might like to discuss testimony re: LD 1149 following regular business. There was general agreement to do so.

C. EXECUTIVE ANALYST COMMENTS: Reminder: Mere Point public hearing is on Monday, March 28th at 8:00a.m. sharp. Draft schedule for the hearing is available for Board members.

D. BOARD CALENDAR: Reviewed

E. DEPARTMENTAL ORDERS: Reviewed

F. EXECUTIVE SESSION: None

II CONSENT AGENDA ITEMS

The Board voted (6-0-1-2) on a motion to approve as presented consent agenda item 1.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, and Jean T. Wilkinson voted to support the motion. Board member Nancy Ziegler voted to abstain. Board members Matt Scott and Richard Wardwell were absent.

1. BEP MINUTES – January 6, 2005 (approval)

The Board noted that consent agenda item 2 was removed from consideration.

2. DAVIS FORESTRY PRODUCTS, INC. and H. CARY BROWN, Weston - Administrative Consent Agreement and Enforcement Order (BLWQ – Water)

The Board voted (7-0-0-2) on a motion to approve as presented consent agenda items 3, 4, 5, and 6

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Jean T. Wilkinson and Nancy Ziegler voted to support the motion. Board members Matt Scott and Richard Wardwell were absent.

3. STATEWIDE ASBESTOS REMOVAL, INC., Machias – Administrative Consent Agreement (BRWM)
4. PIKE INDUSTRIES, INC., Windsor – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
5. WILLIAM A. HILLOCK, Scarborough – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
6. SHERWIN WILLIAMS #5607, Skowhegan – Administrative Consent Agreement (OC)

III. Regular Agenda

1. CHAPTER 102, OPEN BURNING / AMENDMENTS (adoption)

Staff: Andrea Lani, Bureau of Air Quality

The Board voted (7-0-0-2) on a motion to adopt amendments to Chapter 102, Open Burning as presented. The vote was taken pursuant to 38 M.R.S.A. 585-A.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Jean T. Wilkinson and Nancy Ziegler voted to support the motion.

Board members Matt Scott and Richard Wardwell were absent.

2. STATE IMPLEMENTATION PLAN (SIP) – 15 Percent Rate of Progress Plan, 5 Percent Increment of Progress Plan, Motor Vehicle Emissions Budget and 2002 Base Year Inventory / AMENDMENT (post to public hearing)

Staff: Jeffrey S. Crawford, Bureau of Air Quality

The Board voted (7-0-0-2) on a motion post amendments to the State Implementation Plan (SIP) for the 15 Percent Rate of Progress Plan, the 5 Percent Increment of Progress Plan, and Motor Vehicle Emissions Budget and the 2002 Base Year Inventory to public hearing on April 21, 2005. The vote was taken pursuant to 38 M.R.S.A. 585-A and the 1990 Clean Air Act Amendments, Section 107(a).

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Jean T. Wilkinson and Nancy Ziegler voted to support the motion.

Board members Matt Scott and Richard Wardwell were absent.

3. TOWN OF BROOKSVILLE / PERMIT-BY-RULE #29882 (appeal by James and Sharen Benenson, Jr.)

Staff: Valerie Whittier, Bureau of Land and Water Quality

The Board voted (7-0-0-2) on a motion to grant the appeal submitted by James and Sharen Benenson, Jr. reversing the Department's approval of Permit By Rule Permit #29882 for the Town of Brooksville to construct a public boat ramp. The vote was taken pursuant to 38 M.R.S.A. 344 and 341-D(4) and 06-096 CMR Chapter 2.

Board members Nancy Anderson, Donald Guimond, Irving Faunce, Ernest Hilton, Virginia Plummer, Jean T. Wilkinson and Nancy Ziegler voted to support the motion.

Board members Matt Scott and Richard Wardwell were absent.

INFORMATIONAL SESSION

Mercury Overview

Staff: Ginger Jordan-Hillier, Office of the Commissioner

Next Regular Board Meeting – Thursday, April 21, 2005 – Holiday Inn / Ground Round, Augusta

BOARD OF ENVIRONMENTAL PROTECTION
Holiday Inn / Ground Round, Augusta at 9:00 a.m.

March 17, 2005

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

II. CONSENT AGENDA ITEMS

- 003 1. BEP MINUTES – January 6, 2005 (approval)
- 009 2. DAVIS FORESTRY PRODUCTS, INC. and H. CARY BROWN, Weston - Administrative Consent Agreement and Enforcement Order (BLWQ – Water)
- 013 3. STATEWIDE ASBESTOS REMOVAL, INC., Machias – Administrative Consent Agreement (BRWM)
- 019 4. PIKE INDUSTRIES, INC., Windsor – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 023 5. WILLIAM A. HILLOCK, Scarborough – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 027 6. SHERWIN WILLIAMS #5607, Skowhegan – Administrative Consent Agreement (OC)

III REGULAR AGENDA ITEMS

- 031 1. CHAPTER 102, OPEN BURNING / AMENDMENTS (adoption)
Staff: Andrea Lani, Bureau of Air Quality
- 037 2. STATE IMPLEMENTATION PLAN (SIP) – 15 Percent Rate of Progress Plan, 5 Percent Increment of Progress Plan, Motor Vehicle Emissions Budget and 2002 Base Year Inventory / AMENDMENT (post to public hearing)
Staff: Jeffrey S. Crawford, Bureau of Air Quality
- 085 3. TOWN OF BROOKSVILLE / PERMIT-BY-RULE #29882 (appeal by James and Sharen Benenson, Jr.)
Staff: Valerie Whittier

INFORMATIONAL SESSION

Mercury Overview
Staff: Ginger Jordan-Hillier, Office of the Commissioner

Next Regular Board Meeting – Thursday, April 21, 2005 – Holiday Inn / Ground Round, Augusta

*At its meeting the Board will accept additional public comment on a rule proposed for adoption. Additional public comment will be accepted only if it is directly related to comments received during the formal rulemaking comment period or is in response to proposed changes. Comments must be presented orally except by leave of the Chairman